

**SENATE BILL NO. \_\_\_\_\_ HOUSE BILL NO. \_\_\_\_\_**

1 A BILL to amend and reenact § 2.2-4302.2 of the Code of Virginia, relating to the Virginia Public  
2 Procurement Act; procurement of information technology goods and services; contractor  
3 liability.

4 **Be it enacted by the General Assembly of Virginia:**

5 **1. That § 2.2-4302.2 of the Code of Virginia is amended and reenacted as follows:**

6 **§ 2.2-4302.2. Process for competitive negotiation.**

7 A. The process for competitive negotiation shall include the following:

8 1. Issuance of a written Request for Proposal indicating in general terms that which is sought to  
9 be procured, specifying the factors that will be used in evaluating the proposal, indicating whether a  
10 numerical scoring system will be used in evaluation of the proposal, and containing or incorporating by  
11 reference the other applicable contractual terms and conditions, including any unique capabilities,  
12 specifications or qualifications that will be required. In the event that a numerical scoring system will be  
13 used in the evaluation of proposals, the point values assigned to each of the evaluation criteria shall be  
14 included in the Request for Proposal or posted at the location designated for public posting of  
15 procurement notices prior to the due date and time for receiving proposals;

16 2. Public notice of the Request for Proposal at least 10 days prior to the date set for receipt of  
17 proposals by posting on the Department of General Services' central electronic procurement website or  
18 other appropriate websites. Additionally, public bodies shall publish in a newspaper of general  
19 circulation in the area in which the contract is to be performed so as to provide reasonable notice to the  
20 maximum number of offerors that can be reasonably anticipated to submit proposals in response to the  
21 particular request. Posting on the Department of General Services' central electronic procurement  
22 website shall be required of any state public body. Local public bodies are encouraged to utilize the  
23 Department of General Services' central electronic procurement website to provide the public with  
24 centralized visibility and access to the Commonwealth's procurement opportunities. In addition,  
25 proposals may be solicited directly from potential contractors. Any additional solicitations shall include

certified businesses selected from a list made available by the Department of Small Business and Supplier Diversity; and

3. For goods, nonprofessional services, and insurance, selection shall be made of two or more offerors deemed to be fully qualified and best suited among those submitting proposals, on the basis of the factors involved in the Request for Proposal, including price if so stated in the Request for Proposal. In the case of a proposal for information technology, as that term is defined in § 2.2-2006, a public body shall not require an offeror to state exception in a proposal to any liability provisions contained in the Request for Proposal. Negotiations shall then be conducted with each of the offerors so selected. The offeror shall state any exception to liability provisions contained in the Request for Proposal in writing at the beginning of negotiations, and such exceptions shall be considered during negotiation. Price shall be considered, but need not be the sole or primary determining factor. After negotiations have been conducted with each offeror so selected, the public body shall select the offeror which, in its opinion, has made the best proposal and provides the best value, and shall award the contract to that offeror. When the terms and conditions of multiple awards are so provided in the Request for Proposal, awards may be made to more than one offeror. Should the public body determine in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that offeror; or

4. For professional services, the public body shall engage in individual discussions with two or more offerors deemed fully qualified, responsible and suitable on the basis of initial responses and with emphasis on professional competence, to provide the required services. Repetitive informal interviews shall be permissible. The offerors shall be encouraged to elaborate on their qualifications and performance data or staff expertise pertinent to the proposed project, as well as alternative concepts. In addition, offerors shall be informed of any ranking criteria that will be used by the public body in addition to the review of the professional competence of the offeror. The Request for Proposal shall not, however, request that offerors furnish estimates of man-hours or cost for services. At the discussion stage, the public body may discuss nonbinding estimates of total project costs, including, but not limited to, life-cycle costing, and where appropriate, nonbinding estimates of price for services. In accordance

53 with § 2.2-4342, proprietary information from competing offerors shall not be disclosed to the public or  
54 to competitors. At the conclusion of discussion, outlined in this subdivision, on the basis of evaluation  
55 factors published in the Request for Proposal and all information developed in the selection process to  
56 this point, the public body shall select in the order of preference two or more offerors whose  
57 professional qualifications and proposed services are deemed most meritorious.

58 Negotiations shall then be conducted, beginning with the offeror ranked first. If a contract  
59 satisfactory and advantageous to the public body can be negotiated at a price considered fair and  
60 reasonable, the award shall be made to that offeror. Otherwise, negotiations with the offeror ranked first  
61 shall be formally terminated and negotiations conducted with the offeror ranked second, and so on until  
62 such a contract can be negotiated at a fair and reasonable price.

63 Notwithstanding the foregoing, if the terms and conditions for multiple awards are included in  
64 the Request for Proposal, a public body may award contracts to more than one offeror.

65 Should the public body determine in writing and in its sole discretion that only one offeror is  
66 fully qualified or that one offeror is clearly more highly qualified and suitable than the others under  
67 consideration, a contract may be negotiated and awarded to that offeror.

68 B. Multiphase professional services contracts satisfactory and advantageous to the completion of  
69 large, phased, or long-term projects may be negotiated and awarded based on a fair and reasonable price  
70 for the first phase only, where the completion of the earlier phases is necessary to provide information  
71 critical to the negotiation of a fair and reasonable price for succeeding phases. Prior to entering into any  
72 such contract, the public body shall (i) state the anticipated intended total scope of the project and (ii)  
73 determine in writing that the nature of the work is such that the best interests of the public body require  
74 awarding the contract.